

D.T.E. 97-120

Petition of Western Massachusetts Electric Company pursuant to General Laws Chapter 164, §§ 76 and 94, and 220 C.M.R. §§ 1.00 et seq., for review of its electric industry restructuring proposal.

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INITIAL ORDER ON RESTRUCTURING PLAN

I. INTRODUCTION

On December 31, 1997, Western Massachusetts Electric Company ("WMECo" or "Company") submitted a restructuring plan ("Plan") to the Department of Telecommunications and Energy ("Department") pursuant to "an act relative to restructuring the electric utility industry in the Commonwealth, regulating the provision of electricity and other services, and promoting enhanced consumer protection therein" ("Act"), St. 1997, c. 164. The Department has docketed this matter as D.T.E. 97-120. On January 13, 1998 and January 31, 1998, the Company submitted additional exhibits supplementing its restructuring plan.

Pursuant to notice duly issued, the Department conducted public hearings in Pittsfield and Amherst on January 28, 1998 and January 29, 1998, respectively.⁽¹⁾ The Department received written initial comments from the Company, the Office of the Attorney General ("Attorney General"), Associated Industries of Massachusetts ("AIM"), Division of Energy Resources ("DOER"), Enron Energy Services ("Enron"), and the Western Massachusetts Industrial Customers Group ("WMICG"). In addition, the Department received reply comments from the Company, DOER and WMICG. The Department also conducted a procedural conference to establish a schedule for review of the Company's restructuring plan.⁽²⁾

II. DESCRIPTION OF THE PLAN

The Company seeks the Department's approval of its restructuring plan which proposes the rates, and terms and conditions necessary to implement the required rate reductions and customer choice by March 1, 1998 (Plan at 2). The Company states that its restructuring plan delivers a 10 percent rate reduction for those customers who choose the standard offer service, and provides for access to generation suppliers for all of the Company's retail customers as of March 1, 1998 (*id.* at 3-5). The Company's restructuring plan provides that, beginning March 1, 1998, customers will have the

opportunity to purchase electricity from any alternative supplier, subject only to the Department's licensing requirements (id. at 5).

The Company has proposed the elimination of certain rates on which no customers are currently taking service and the elimination of rates that will make its customers better off on March 1, 1998. The Company also proposes to eliminate other rates on March 1, 1999, including optional time-of-use rates for smaller and intermediate general service customers, interruptible rates and back-up rates (id. at 19-20).⁽³⁾

To calculate the rate reduction required by the Act, the Company identified the base rates approved by the Department in the Company's last rate proceeding, Western Massachusetts Electric Company, D.P.U. 91-290 (1992), as modified to reflect the Company's fuel expense adjustment clause, energy conservation service charge, and conservation charge as of August 1, 1997, as the appropriate reference rate (WMECo Reply Comments at 6). The Company contends that, but for a settlement credit approved by the Department in Western Massachusetts Electric Company, D.P.U. 88-8C et al. (1994), and extended in Western Massachusetts Electric Company, D.P.U. 94-8C et al. (1996), the D.P.U. 91-290 base rates would have been in effect in August of 1997, and that because the settlement credit was to expire on February 28, 1998, the D.P.U. 91-290 base rates would have been in effect on March 1, 1998 (id.). The Company also states that the Act gives the Department the ability to determine rates that are representative of August 1997 rates (id.).

In addition, the Company states that its restructuring plan (1) includes a mitigation plan that describes the divestiture of the Company's generation resources and securitization to ensure the highest possible mitigation of transition costs, (2) contains illustrative tariffs that will unbundle rates for generation, distribution and transmission service,⁽⁴⁾ (3) details the level and the method of recovery of transition charges, (4) proposes programs and recovery mechanisms to promote energy efficiency and renewable resources, (5) details how universal service for all customers will be provided, and (6) discusses the impact of the restructuring plan on the Company's employees and the communities served by the Company (WMECo Petition at 3).

The Company would provide standard offer service over a seven-year period beginning in 1998 at 2.8 cents per kilowatthour ("KWH"), and escalating at preset levels for the following six years (Plan at 6). The standard offer service would be available to those customers who do not choose an alternative energy supplier. Default service would be available to those customers who are not eligible for standard offer service (id.). The Company has proposed that the supply for the standard offer and default services would be obtained through competitive bidding, open to all bidders. The bidding would be administered by an independent third party retained by WMECo, and would occur after the Company's non-nuclear generating plants are divested and the Northeast Utilities Generation & Transmission ("NUG&T") agreement modifications are approved by the Federal Energy Regulatory Commission ("FERC") (id.).⁽⁵⁾ In order to provide the standard offer and default services until the NUG&T agreement is modified and

WMECo's plants are divested, the Company proposes to use the NU system generation resources, pursuant to the NUG&T agreement (id.).

The Company states that the solicitation of the supply for the standard offer and default services would be coordinated with the sale of its non-nuclear generation assets (id. at 27). The winning bidder(s) would be those that offer the highest discounts against predetermined annual price caps that range from 3.2 cents per KWH in 1998 to 5.1 cents per KWH in 2004-2005 (id. at 29-30). The Company would reconcile the revenues received from standard offer service retail customers against payments made to suppliers of standard offer service (id.). The Company would recover from or refund to retail customers any under- or over-collections (id. at 30). The Company requests that the Department review and approve this solicitation process and the interim supply arrangement.

The Company has proposed the recovery of net, non-mitigable transition costs through a non-bypassable charge applied to all customers taking distribution service (id. at 6-7). The Company has identified these costs as (1) the portion of the net book value of generating plants that is in excess of the market value, (2) the portion of contractual commitments for purchased power in excess of the market value, (3) regulatory assets, and (4) nuclear plant shut-down and decommissioning expenses (id.).

The Company has included an accounting of its transition costs to facilitate the initiation of the comprehensive audit to be conducted by the Department (Plan, Exhs. 13, 13A). Specifically, the Company has presented the method used for the calculation of the transition charge, including the calculation of both fixed and variable components. The fixed component provides revenues sufficient to collect the unrecovered net book value of generation-related investments and regulatory assets and an overall return (id.). The variable component includes nuclear decommissioning and related post-shutdown obligations, above-market payments to power suppliers, future economic buy-out payments, above-market fuel transportation costs, transmission wheeling costs, employee severance and retraining, payments in lieu of property taxes, liability damages or recoveries, nuclear performance incentives, and generating operating costs under the interim NUG&T agreement (id.). The Company requests that the Department approve WMECo's transition costs, subject to further review and reconciliation, so that they can be collected in rates effective March 1, 1998.

In order to meet the Act's requirement for mitigation of transition costs, the Company plans to divest its non-nuclear generation resources through a competitive bid process (Plan at 7-8). The Company states that the auction of generation resources through this competitive process will establish their market value and maximize the mitigation of transition costs (id.). The Company will also include contracts with independent power producers as part of the resources that it expects to auction under its plan to divest its non-nuclear generating plants (id.). The Company requests that the Department review and approve this procedure to allow the auction to be completed as early as June 30, 1998 (id.). The Company states that interim continuation of the NUG&T agreement and

near-term securitization are essential components of its plan to mitigate transition costs (id. at 8).

With respect to the operation of its nuclear facilities, the company contends that there are significant economic benefits, when they return to service, in WMECo's ownership interest in the nuclear units at Millstone Station,⁽⁶⁾ even in a competitive marketplace (id.). The Company has proposed to create a performance-based approach for sharing these economic benefits as a direct offset to the Company's transition costs (id.).⁽⁷⁾ The Company has proposed an interim sharing mechanism, that upon the termination of the NUG&T agreement through December 31, 2009, will capture these benefits as a reduction to transition costs (id. at 39).

The Company has proposed demand-side management and renewables funding levels pursuant to the funding levels set forth in the Act (id. at 10). As a component of transition costs, the Company has also proposed to include a mechanism for collecting sums that may be required for severance, retraining, early retirement, outplacement, and related expenses for all affected personnel (id.). With regard to community impact, the Company states that its restructuring plan explains the impacts on communities and indicates the municipalities in which WMECo's generation is a significant portion of the municipalities' taxable base, and explains WMECo's plans to address these impacts (id.).

III. COMMENTS

A. Initial Comments

1. Company

The Company contends that its restructuring plan meets the requirements of the Act (WMECo Comments at 1). Specifically, the restructuring plan includes provisions that permits retail customers to choose energy suppliers by March 1, 1998, and provides for a ten percent rate reduction for customers who choose standard offer service (id.). In addition, the Company contends that the restructuring plan (1) provides and estimate and accounting of transition costs, a description of strategies to mitigate transition costs; (2) unbundled prices for generation, distribution, transmission, and other services; (3) proposed charges for the recovery of transition costs; (4) proposed programs to provide universal service for all customers; (5) proposed programs and recovery mechanisms to promote energy conservation and supply-side management; (6) discuss the impact of the restructuring plan on employees and the communities it serves (id. at 5-7).

2. Office of Attorney General

The Attorney General states that the Company's restructuring plan fails to comply with the Act (Attorney General Comments at 2). The Attorney General contends that, among other things, the Company's restructuring plan (1) fails to provide the required ten

percent reduction from rates in effect in August of 1997, (2) provides for recovery as transition costs that are not within the scope of transition cost as defined by the Act, (3) fails to comply with the statutory requirements for the provision of standard offer service and (4) provides for the recovery of cost that were incurred as a result of imprudence (id.)

3. Division of Energy Resources

DOER states that, for the purposes of an initial order, the Department should establish only those tariffs and implementation procedures which are absolutely necessary to provide customers with a ten percent rate reduction and an opportunity to exercise choice of supplier (DOER Comments at 1). Therefore, DOER contends that an initial order issued by the Department should be limited to the approval of temporary tariffs designed to provide a ten percent or greater reduction in rates, approval of an interim transition charge and associated methodology, subject to further review, and approval of a methodology for obtaining standard offer and default service (id. at 2).

4. Enron Energy Services Company

Enron states that the Company's restructuring plan will impede the development of meaningful retail competition and customer choice (Enron Comments at 2). Specifically, Enron contends that the standard offer price would be less than market price, and deferral provisions (id. at 3). In addition, Enron contends that the company's restructuring plan does not mitigate stranded cost to the maximum extent possible because of the (1) backstop obligation; (2) proposed treatment of divestiture proceeds; (3) proposed purchase power arrangements; (4) proposed return on equity; (5) proposal to expedite the securitization process; (6) inclusion of capital expenditure after December 31, 1995 in the fixed component of the transition charge; (7) removal of lost revenue and capital expenditures after December 31, 1995 from the residual value credit; (8) inclusion of above-market fuel transportation costs; (9) regulatory assets included in the transition charge; and (10) mitigation incentive mechanism and nuclear performance based ratemaking proposals (id. at 4). Enron also contends that the Company should not be allowed to recover transition costs until the audit process is complete (id.).

5. Associated Industries of Massachusetts

AIM contends that the Department should consider an initial order, subject to further review and reconciliation (AIM Comments at 1). AIM states that issues regarding stranded costs recovery, ratemaking, securitization, standard offer, and deferrals require further analysis (id.).

6. Western Massachusetts Industrial Customers Group

WMICG contends that the Company's restructuring plan does not meet the requirements of the Act (WMICG Comments at 1). Specifically, WMICG contends that (1) rates will not be reduced by ten percent, after consideration of a fuel adjustment credit and base rate settlement credit, and that the reductions are actually deferrals; (2) the return on equity is excessive; (3) the transition cost are not verifiable; and (4) the provision of standard offer service is not consistent with the Act (id. at 2-5). In addition, WMICG contends that customers on interruptible rates and special contracts do not realize the required rate reduction (id.).

7. Houses of Worship

The Houses of Worship states that the rates for electric service are unfair and inequitable (Houses of Worship Comments at 1). Specifically, the Houses of Worship contend that church rates should more accurately reflect costs to serve the class, including reduced demand and customer charges and more equitable conservation charges (id.).

B. Reply Comments

1. Company

The Company states that it has made a comprehensive transition cost filing (WMECo Reply Comments at 4). The Company contends that it has proposed a ten percent rate reduction for retail customers from the appropriate reference rate (id. at 5-7). The Company contends that the Department should permit the implementation of transition rates as of March 1, 1998 (id. 8). The Company states that the transition costs should be approved after an initial audit, subject to further review and reconciliation (id.).

2. Division of Energy Resources

DOER states that the Company' restructuring plan is ambiguous, incomplete, and inconsistent with Act DOER Reply Comments at 3). With respect to an initial order, DOER contends that the Department must decide the initial wholesale and retail price of standard offer service, an appropriate "placeholder" transition charge, an appropriate method of providing standard offer service prior to competitive solicitation, the appropriate rate treatment for the Company's nuclear and non-nuclear generation assets during the period prior to a competitive solicitation, and the appropriate treatment for the nuclear and non-nuclear assets after a competitive solicitation (id. at 2-3).

3. Western Massachusetts Industrial Customers Group

WMICG contends that language in the T-2 tariffs prohibiting resale should be removed to comply with the Act (WMICG Reply Comments at 1-2).

III. STANDARD OF REVIEW

The Legislature has vested broad authority in the Department to regulate the ownership and operation of electric utilities in the Commonwealth. See, e.g., G.L. c. 25, §§ 5, 9, 18, 19, and 20; c. 111, §§ 5K and 142N; and c. 164, §§ 1 through 33, 69G through 69R, 71 through 75, and 76 et seq. This authority was most recently revised and augmented by the Act. The primary goal of the Act is to establish a new electric utility "framework under which competitive producers will supply electric power and customers will gain the right to choose their electric power supplier" in order to "promote reduced electricity rates." St. 1997, c. 164, § 1.

Among other things, the Act authorizes and directs the Department to "require electric companies organized pursuant to the provisions of [G.L. c. 164] to accommodate retail access to generation services and choice of suppliers by retail customers, unless otherwise provided by this chapter. Such companies shall file plans that include, but shall not be limited to, the provisions set forth in this section." St. 1997, c. 164, § 193 (G.L. c. 164, 1A(a)). Pursuant to this statutory authority, the Department will review an electric company's restructuring plan for compliance with applicable provisions of the Act.

The Act sets forth explicit directions for the Department's review of restructuring plans. Plans must contain two key features. First, they must provide, by March 1, 1998, a rate reduction of 10 percent for customers choosing standard offer service from the average of undiscounted rates for the sale of electricity in effect during August 1997, or such other date as the Department may determine. Id. Second, each plan must be designed to implement a restructured electric generation market by March 1, 1998 by requiring the electric company to offer retail access to all customers as of that date. Id.

Plans must also include the following nine essential provisions:

- (1) an estimate and detailed accounting of total transition costs eligible for recovery pursuant to G.L. c. 164, § 1G(b);
- (2) a description of the company's strategies to mitigate transition costs;
- (3) unbundled prices or rates for generation, distribution, transmission, and other services;
- (4) proposed charges for the recovery of transition costs;
- (5) proposed programs to provide universal service for all customers;
- (6) proposed programs and mandatory charges to promote energy conservation and demand-side management;
- (7) procedures for ensuring direct retail access to all electric generation suppliers;

(8) discussions of the impact of the plan on the Company's employees and the communities served by the Company; and

(9) a mandatory charge per kilowatthour for all consumers to support the development and promotion of renewable energy projects;

G.L. c. 25, § 20(a)(1); G.L. c. 164, § 1A(a).

To allow implementation of retail access for all customers on March 1, 1998, the Department may issue an initial order prior to March 1, 1998, approving any plan filed pursuant to this section, subject to further review and reconciliation. G.L. c. 164, § 1A(a). In an initial order, the Department will make an initial determination whether the restructuring plan proposed by the Company provides the required rate reduction for customers choosing the standard offer service and offers retail access to all customers by March 1, 1998. In an initial order, the Department will also determine whether the restructuring plan proposed by the Company includes the nine important provisions listed above.

In addition, the Department must identify and determine those costs and categories of costs for generation-related assets, investments, and obligations which may be allowed to be recovered through a non-bypassable transition charge authorized to be assessed and collected in accordance with the provisions of the Act. Id. at § 193, 1G(a). Transition costs may not be approved by the Department until the Department completes an initial audit of electric company records maintained on file at the Department, including an accounting of all costs eligible for recovery, and no amount shall be collected by a distribution company unless such amount has been approved by the Department. Id. The Department must, no later than December 31, 1998, conduct a comprehensive audit of each distribution company and applicable electric company in order to assure substantial compliance with the provisions of the Act. Id. After further review, the Department will issue an order on whether the electric company's restructuring plan complies with the Act, including appropriate adjustments and reconciliation, and tariffs reflecting the Department's review.

IV. ANALYSIS AND FINDING

The Act requires a rate reduction of 10 percent for customers choosing standard offer service from the average of undiscounted rates for the sale of electricity in effect during August of 1997, or such other date as the Department may determine. The Company identified the base rates approved by the Department in the Company's last rate

proceeding, D.P.U. 91-290, as the appropriate reference rate in order to calculate the required reduction.

But for a settlement credit approved by the Department,⁽⁸⁾ the D.P.U. 91-290 base rates would have been charged in August of 1997.⁽⁹⁾ The settlement credit is a temporary reduction from the rates established by the Department in D.P.U. 91-290, and is scheduled to expire on February 28, 1998. Therefore, the underlying D.P.U. 91-290 base rates would have been in effect on March 1, 1998. Because of the Act, however, the rates established in D.P.U. 91-290 will be replaced with rates to reflect the reductions required by the Act. For the purposes of an initial order, the Department finds that the rates that would have been in effect, but for the settlement credit, are representative of rates for August of 1997, and that the Company's restructuring plan, as proposed, provides for a 10 percent rate reduction from the rates that would have been in effect in August of 1997, excluding the settlement credit. The determination of rates representative of August 1997 is subject to further review and reconciliation.

However, because the Company has proposed to eliminate several rate classes, certain customers might not receive the required reduction. For the purposes of an initial order, the Company may not eliminate rate classes and cause customers to be placed into classes which do not provide the required reduction. Therefore, the Company is directed to resubmit tariffs that do not eliminate rate classes, and that provide the rate reduction required by the Act for all customers within the restored classes. In addition, to be consistent with the billing requirements of the Act, the demand-side-management and renewables charges specified by the Act must be deducted from the base rates and must be separately stated on the individual tariffs. In order to ensure that these funds are properly tracked, the Department finds it appropriate to require that DSM and renewables be separately tariffed.⁽¹⁰⁾ See St. 1997, c. 164, § 37 (G.L. c. 25, § 20(c)). Additionally, separate tariffs of DSM and renewables would further the intent of the Act that DSM and renewables charges are to be separately identified on customers' bills. See St. 1997, c. 164, § 37 (G.L. c. 25, § 20(a)(1)). Accordingly, the Company is directed to file separate DSM and renewables tariffs. The Company must also revise the low-income tariff to be consistent with the Act. See G.L. c. 164, § 1D. The Department finds that the submission of tariffs consistent with these directives, for the purposes of an initial order, will provide the rate reductions required by the Act.

With respect to the requirement to provide retail access to all customers, the Company's restructuring plan provides that, beginning March 1, 1998, customers will have the opportunity to purchase electricity from any alternative supplier. Therefore, the Company's restructuring plan meets the Act's requirement to provide retail access to all customers.

With respect to the provision of standard offer and default services, the Company has proposed that the supply for standard offer and default services would be provided on an interim basis from the NU system generation resources, pursuant to the NUG&T agreement. While the supply for the standard offer rate and default service from the

NU system generation resources may be necessary on an interim basis to allow implementation of retail access on March 1, 1998, to be consistent with the Act, the Company must conduct a competitive solicitation for these resources. A competitive solicitation is required regardless of the divestiture of the non-nuclear generating plants or the NUG&T agreement modifications. The Company must conduct this solicitation as soon as possible, and should not wait for the sale of its non-nuclear generation assets.

With respect to the price for standard offer service, the Company has proposed to provide the standard offer service beginning at 2.8 cents per KWH and reconcile the revenues received from retail customers taking standard offer service against payments made to suppliers and recover from or refund to retail customers any under- or over-collections. For the purposes of an initial order, during the interim period until the Company conducts a competitive solicitation of the supply for standard offer and default services, the Department approves the Company's standard offer rate and default service proposal. The price for the standard offer service will be established in a subsequent order on the Company's restructuring plan and is subject to further review and reconciliation.

With respect to the provisions that must be included in an electric company's restructuring plan, the Company has provided an estimated and detailed accounting of total transition costs eligible for recovery and a description of its strategies to mitigate transition costs. In addition, the Company has proposed charges for recovery of transition costs.

The Company has also provided unbundled prices or rates for generation, distribution, transmission, and other services and proposed programs to provide universal service for all customers. The Company has included procedures for ensuring direct retail access to all electric generation suppliers.

The Company has proposed programs and mandatory charges to promote energy conservation and demand-side management, and to support the development and promotion of renewable energy projects. The Company's restructuring plan also discusses the impact of the plan on the Company's employees and the communities served by the Company.

To issue an initial order, the Department must determine that the Company has identified and described the costs eligible for recovery. In order to make this determination, the Department has conducted an initial audit of the Company's proposed restructuring plan, including an accounting of the costs eligible for recovery, subject to further review and reconciliation. Based on an initial review of information on file with the Department, the Department concludes that Company has presented the method used for the calculation of the transition charge and described the costs eligible for recovery.

Therefore, the Department finds that the Company's restructuring plan provides the required rate reduction and retail access for all customers after March 1, 1998, and includes the nine essential provisions of the Act. Accordingly, the Department, for the purposes of an initial order, approves the Company's restructuring plan. While the Act authorizes the Department to approve the Company's restructuring plan in an initial order, the Department has determined that further review is necessary. Therefore, the Department's approval of the Company's restructuring plan is subject to further review and reconciliation. The initial order provision of the Act allows statewide implementation of electric restructuring by March 1, 1998. No interim finding in this initial order may be cited to estop the Department from making variant or different findings upon a more intensive review of the Company's restructuring plan.

VI. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That the tariffs submitted on January 30, 1998: M.D.T.E. 1000A through 1015A, 1017A through 1022A, and 1025A through 1029A for Western Massachusetts Electric Company; be and hereby are **DISALLOWED**, and it is FURTHER

ORDERED: That Western Massachusetts Electric Company shall comply with the directives of this initial order; and it is

FURTHER ORDERED: That Western Massachusetts Electric Company shall file retail access tariffs consistent with this initial order for service on and after March 1, 1998; and it is

FURTHER ORDERED: That tariffs for retail access consistent with this initial order for service on and after March 1, 1998 shall not become effective until approved by the Department.

FURTHER ORDERED: The restructuring plan submitted by Western Massachusetts Electric Company, for the purposes of an initial order and subject to further review and reconciliation be and hereby is **APPROVED**.

By Order of the Department,

Janet Gail Besser, Chair

John D. Patrone, Commissioner

James Connelly, Commissioner

1. The Department received notice of intervention from the Office of the Attorney General pursuant to G.L. c. 12, §11, and granted the petitions to intervene or participate from the Division of Energy Resources; Associated Industries of Massachusetts; Boston Edison Company; Cambridge Electric Light Company, Canal Electric Company, and Commonwealth Electric Company ("Com/Electric"); Conservation Law Foundation; Eastern Edison Company; EnergyExpress, Inc.; Enron Energy Services; Massachusetts Energy Directors Association, Massachusetts Community Action Association, Massachusetts Senior Action Council, and Cape Organization for Rights of Disabled ("Low-Income Intervenors"); Massachusetts Alliance of Utility Unions; Massachusetts Municipal Wholesale Electric Company; Northeast Energy Efficiency Council; Tractebel Power, Inc.; Unitil/Fitchburg Gas and Electric Light Company; General Electric Company; International Paper Company, Mead Corporation, Schweitzer-Mauduit International, Inc., and Solutia, Inc. ("Western Massachusetts Industrial Customers Group"); International Brotherhood of Electrical Workers, Local 455; and Temple Beth El and Kodimoh Synagogue ("Houses of Worship").

2. At this procedural conference, the Department indicated its intention to issue an initial order in this proceeding.

3. Specifically, the Company proposed to eliminate:

Rate Year Eliminated

Small Residential Time of Use, Schedule R-4 1998

Large Residential Time of Use, Schedule R-5 1998

Small General Service Time of Use, Schedule T-0 1999

Primary General Service Time of Use, Schedule T-4 1999

Interruptible Service Menu, Schedule I-1 1999

Intermediate Interruptible Service Menu, Schedule I-2 1998

Buy-Back Interruptible Service, Schedule I-3 1999

Demand Reduction Rider to Rate T-2 1998

Service Extension Discount Rider 1998

Energy Conservation Service Rider 1998

Conservation Charge Rider 1998

Retail Fuel Expense Adjustment Clause 1998

Schedule PR, Standby and Supplemental Power Service for 1999 Partial Requirements
General Service Customers

4. The Company submitted illustrative tariffs on December 31, 1997: M.D.T.E. 1000 through 1015/1016A, 1017 through 1022, and 1025 through 1029, and revised tariffs on January 30, 1998: M.D.T.E. 1000A through 1015A, 1017A through 1022A, and 1025A through 1029A.

5. Under the NUG&T, the total production plant capacity costs, backbone transmission capacity costs, and energy costs of the NU system companies are pooled and then allocated among the companies based on each company's proportionate use of the system's facilities, as measured by demand and energy usage.

6. The Company is a joint owner of three nuclear plants at the site, representing ownership shares as follows: Unit 1, 660 megawatts ("MW") or 19 percent; Unit 2, 870 MW or 19 percent; Unit 3, 1,150 MW or 12.24 percent (id. at 36).

7. The performance based rates will be calculated as (1) revenue from the sale of the Millstone plants' capacity and energy produced will be reduced by total reasonable operating costs including return of and on capital additions incurred after December 31, 1995 on a cost-of-service basis not otherwise recovered in the transition charge; (2) to

the extent that revenue is in excess of expense for a given year, 25 percent of that amount will be refunded to customers by means of a credit to the transition charge in the subsequent year; (3) to the extent that expenses are in excess of revenue for a given year, 25 percent of that amount will be collected through a debit to the transition charge in the subsequent year (id. at 39).

8. The Department notes that the settlement credit was the resolution of performance review issues that normally would have resulted in a fuel charge adjustment. The base rate settlement credit satisfied the Department's rate continuity and allocation concerns.

9. There was also a fuel adjustment clause settlement approved by the Department in D.P.U. 97-8C (1997) which was effective September 2, 1997, and not in effect in August of 1997.

10. Consistent with this finding, the Companies are directed to modify their retail delivery tariffs to include a rate adjustment clause to specify the separate adjustment components for the DSM charge and renewables charge.